APPENDIX A

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

CITY OF MONTGOMERY, ALABAMA,
a Municipal Corporation,

Plaintiff,

vs.

PERSONS HEREIN NAMED, IF ANY,
AND CERTAIN LANDS,

Defendants.

DOCKET NO.
CV-80-751
CV-80-753
CV-80-840
CV-80-841
CV-80-842
CV-80-844
CV-80-845
CV-80-846
CV-80-847
CV-80-848
CV-80-849
CV-80-850
CV-80-851
CV-80-853
CV-80-854
CV-80-855
CV-80-856
CV-80-754
CV-80-752

ORDER

These actions having been consolidated by Order of this Court dated June 19, 1980 come before the Court upon the pleadings filed by the parties of record and upon evidence taken by the Court ore tenus sitting without a jury.

Guardian Ad Litems were appointed by the Court but were discharged when the record established that there were no unknown parties. A Special Master was appointed by the Court to perform an independent review and inspection of the subject properties and report to the Court; said report was received by the Court and all parties of record on or about November 17, 1980.

The Court having considered the above finds that it has jurisdiction of these actions and further finds that the plaintiff is entitled to the following relief with regard to the specific properties involved herein:

FINDINGS OF FACT

The above actions were brought by the City of Montgomery, Alabama, a Municipal Corporation, to enjoin and abate public nuisances in accordance with Section 6-5-122 and 11-47-117-118, Code of Alabama, 1975.

The Court finds that each of the subject properties remain, in varying degrees, public nuisances and further finds that the City of Montgomery, Alabama, a Municipal Corporation, has legal authority to enjoin and abate such public nuisances.

The Court finds from the evidence that the Plaintiff has pursued the abatement of the public nuisance condition of the subject properties for several years and more specifically

has attempted to require the present property owner, Defendant Charles S. Conley, to remove or correct the public nuisance condition existing on each of the subject properties since 1978.

The Court finds from the evidence that the Plaintiff has made reasonable requests of the property owner, Conley, to remove the public nuisance conditions existing on the subject properties and has established reasonable time tables for the removal or correction of the public nuisance conditions existing thereon. The Court further finds, however, that the Defendant property owner, Conley, has failed, after notice, to comply with these time tables to bring the subject properties above public nuisance standards.

The Court finds from the evidence that the Plaintiff has not discriminated against either the subject properties or the owner of the subject properties in its application and enforcement of Sections 6-5-122 and 11-47-117 thru 118, Code of Alabama, 1975. While the evidence in these subject cases clearly demonstrate lack of discrimination by the Plaintiff, the Court, being familiar with numerous other proceedings, brought by the Plaintiff to abate public nuisances, takes judicial knowledge of the standard procedures employed by the Plaintiff and finds that these procedures were employed by the Plaintiff with regard to the subject properties and as concerns the subject property owner.

The Court finds from the evidence that some minor repairs have been made by the property owner, Conley, on some of the subject structures since the report of the Special Master but that each of the subject properties remain below public nuisance standards. However, since some of the subject properties have been partially improved, it is the opinion of this Court that equity requires that the property

owner be given the election of bringing the subject properties above public nuisance standards within a reasonable time table established by the Court or suffer the removal or razing of said structures by the Plaintiff.

The Court finds from the evidence that the standard procedures followed by the Plaintiff where a property owner elects to repair a structure which is a public nuisance is for the owner to obtain a building permit from the City, for the owner to notify the City upon completion of the repairs, and then for the City to conduct an inspection to verify whether the structure has been repaired above public nuisance standards. If the Defendant property owner elects to repair the subject structures within the time table set by the Court, the above procedures will be followed but, in addition, the Plaintiff will report its findings from final inspection to this Court.

If the City of Montgomery finds that the repairs have been satisfactorily completed to bring the property above public nuisance standards, the case on that particular tract will be closed. However, if the City determines that a public nuisance still exists after repairs, the matter will be set down for hearing before this Court with notice to the property owner, to determine whether the repairs have satisfactorily been made to bring the subject tract above public nuisance standards.

IT IS, THEREFORE
ORDERED, ADJUDGED AND DECREED as follows:

1. That each of the subject tracts involved in this consolidated action are public nuisances.

2. That the Defendant, Charles S. Conley, must remove the public nuisance located on the following subject properties in accordance with the time table set by the Court with regard to each specific tract. If, after a hearing, with notice to the property owner, the Court determines that the subject tract has not been brought above public nuisance standards within the time table established by the Court, the city will be authorized to remove the nuisance structure from the property and the Defendant will be enjoined from maintaining said nuisance. The property owner, if he elects to repair the subject properties, is ordered to obtain a building permit for said repairs from the City of Montgomery and to give the City of Montgomery notice of completion of said repairs prior to the expiration of the time table set by the Court with regard to the subject tract.

3. The Court establishes the following time table for the repair of the subject properties or otherwise removal of the public nuisance conditions existing thereon.

a. Case No. 80-754 1612-14 Hardaway Street

Case No. 80-856 1606-08 Hardaway Street
Case No. 80-855 1600-02 Hardaway Street

The repairs necessary to bring the above properties above public nuisance standards must be completed within 45 days from the date of this Order.

b. Case No. 80-840 1400-02 Hardaway Street

The repairs necessary to bring the above property above public nuisance standards must be completed within 72 days from the date of this Order.

c. Case No. 80-841 1406-08 Hardaway Street

The repairs necessary to bring the above property above public nuisance standards must be completed within 90 days from the date of this Order.

d. Case No. 80-842 1412-14 Hardaway Street
Case No. 80-844 1418-20 Hardaway Street

The repairs necessary to bring the above properties above public nuisance standards must be completed within 120 days from the date of this Order.

e. Case No. 80-845 1430-32 Hardaway Street
Case No. 80-846 1436-38 Hardaway Street

The repairs necessary to bring the above properties above public nuisance standards must be completed within 150 days from the date of this Order.

f. Case No. 80-847 1442-44 Hardaway Street
Case No. 80-848 1500-02 Hardaway Street

The repairs necessary to bring the above properties above public nuisance standards must be completed within 180 days from the date of this Order.

g. Case No. 80-752 1506-08 Hardaway Street
Case No. 80-849 1518-20 Hardaway Street

The repairs necessary to bring the above properties above public nuisance standards must be completed within 210 days from the date of this Order.

h. Case No. 80-753 1512-14 Hardaway Street
Case No. 80-850 1424-26 Hardaway Street

The repairs necessary to bring the above properties above public nuisance standards must be completed within 240 days from the date of this Order.

i. Case No. 80-851 1530-32 Hardaway Street
Case No. 80-853 1536-38 Hardaway Street
Case No. 80-854 1542-44 Hardaway Street

The repairs necessary to bring the above properties above public nuisance standards must be completed within 270 days from the date of this Order.

4. That the Guardian Ad Litems in the above actions are entitled to a reasonable fee for their services rendered herein, however, the Court retains jurisdiction and reserves the setting of said fee for a later date.

5. That the Plaintiff is entitled to recover of the Defendants all costs incurred herein, including but not limited to abstract fees, attorneys' fees, Court costs, and the cost of removing said nuisance, if said nuisance is removed by the Plaintiff.

6. The Court retains jurisdiction for the enforcement of this Order and for the adjudication of all issues involved in these actions which have not been determined by this Decree.

DONE this the 27th day of March, 1981.

/s/ Sam W. Taylor
SAM W. TAYLOR circuit Judge

Richard Belser, Esq.
Charles Conley, Esq.
William Brittain, Esq.

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

CITY OF MONTGOMERY, ALABAMA,
a Municipal Corporation,

Plaintiff,

vs.

PERSONS HEREIN NAMED, IF ANY,
AND CERTAIN LANDS,

Defendants.

DOCKET NO.

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CV-80-849	CV-80-850
CV-80-851	CV-80-853
CV-80-854	CV-80-855
CV-80-856	CV-80-754
CV-80-752	

AMENDMENT TO ORDER

It appears to the Court that a clerical error and omission have resulted in the drafting of the Court's Order with regard to the above consolidated cases. The two errors are as follows:

1. Case No. 80-850 is listed in the original Order as 1424-26 Hardaway Street but should be listed as 1524-26 Hardaway Street.

2. Case No. 80-751 was erroneously omitted in the original Order. Case No. 80-751 is 1424-26 Hardaway Street. This property should be brought above public nuisance standards within 130 days from the date of this Order.

The original Order of this Court entered on the 27th day of March, 1981, is hereby vacated and the following Order is substituted therefor.

ORDER AS AMENDED

These actions having been consolidated by Order of this Court dated June 19, 1980 come before the Court upon the pleadings filed by the parties of record and upon evidence taken by the Court ore tenus sitting without a jury.

Guardian Ad Litems were appointed by the Court but were discharged when the record established that there were no unknown parties. A Special Master was appointed by the Court to perform an independent review and inspection of the subject properties and report to the Court; said report was received by the Court and all parties of record on or about November 17, 1980.

The Court having considered the above finds that is (sic) has jurisdiction of these actions and further finds that the Plaintiff is entitled to the following relief with regard to the specific properties involved herein:

FINDINGS OF FACT

The above actions were brought by the City of Montgomery, Alabama, a Municipal Corporation, to enjoin and abate public nuisances in accordance with Sections 6-5-122 and 11-47-117-118, Code of Alabama, 1975.

The Court finds that each of the subject properties remain, in varying degrees, public nuisances and further finds that the City of Montgomery, Alabama, a Municipal Corporation, has legal authority to enjoin and abate such public nuisances.

The Court finds from the evidence that the Plaintiff has pursued the abatement of the public nuisance condition of the subject properties for several years and more specifically has attempted to require the present property owner, Defendant Charles S. Conley, to remove or correct the public nuisance condition existing on each of the subject properties since 1978.

The Court finds from the evidence that the Plaintiff has made reasonable requests of the property owner, Conley, to remove the public nuisance conditions existing on the subject properties and has established reasonable time tables for the removal or correction of the public nuisance conditions existing thereon. The Court further finds, however, that the Defendant property owner, Conley, has failed, after notice, to comply with these time tables to bring the subject properties above public nuisance standards.

The Court finds from the evidence that the Plaintiff has not discriminated against either the subject properties or the owner of the subject properties in its application and enforcement of Sections 6-5-122 and 11-47-117 thru 118, Code of Alabama, 1975. While the evidence in these subject cases clearly demonstrate lack of discrimination by the Plaintiff, the Court, being familiar with numerous other proceedings, brought by the Plaintiff to abate public nuisances, takes judicial knowledge of the standard procedures employed by the Plaintiff and finds that these procedures were employed by the Plaintiff with regard to the subject

properties and as concerns the subject property owner.

The Court finds from the evidence that some minor repairs have been made by the property owner, Conley, on some of the subject structures since the report of the Special Master but that each of the subject properties remain below public nuisance standards. However, since some of the subject properties have been partially improved, it is the opinion of this Court that equity requires that the property owner be given the election of bringing the subject properties above public nuisance standards within a reasonable time table established by the Court or suffer the removal or razing of said structures by the Plaintiff.

The Court finds from the evidence that the standard procedures followed by the Plaintiff where a property owner elects to repair a structure which is a public nuisance is for the owner to obtain a building permit from the City, for the owner to notify the City upon completion of the repairs, and then for the City to conduct an inspection to verify whether the structure has been repaired above public nuisance standards. If the Defendant property owner elects to repair the subject structures within the time table set by the Court, the above procedures will be followed but, in addition, the Plaintiff will report its findings from final inspection to this Court.

If the City of Montgomery finds that the repairs have been satisfactorily completed to bring the property above public nuisance standards, the case on that particular tract will be closed. However, if the City determines that a public nuisance still exists after repairs, the matter will be set down for hearing before this Court with notice to the property owner, to determine whether the repairs have satisfactorily

been made to bring the subject tract above public nuisance standards.

IT IS , THEREFORE,
ORDERED, ADJUDGED AND DECREED as follows:

1. That each of the subject tracts involved in this consolidated action are public nuisances.

2. That the Defendant, Charles S. Conley, must remove the public nuisance located on the following subject properties in accordance with the time table set by the Court with regard to each specific tract. If, after a hearing, with notice to the property owner, the Court determines that the subject tract has not been brought above public nuisance standards within the time table established by the Court, the City will be authorized to remove the nuisance structure from the property and the Defendant will be enjoined from maintaining said nuisance. The property owner, if he elects to repair the subject properties, is ordered to obtain a building permit for said repairs from the City of Montgomery and to give the City of Montgomery notice of completion of said repairs prior to the expiration of the time table set by the Court with regard to the subject tract.

3. The Court establishes the following time table for the repair of the subject properties or otherwise removal of the public nuisance conditions existing thereon.

a. Case No. 80-754 — 1612-14 Hardaway Street
Case No. 80-856 — 1606-08 Hardaway Street
Case No. 80-855 — 1600-02 Hardaway Street

The repairs necessary to bring the above properties above public nuisance standards must be completed

within 45 days from the date of this Order.

b. Case No. 80-840 1400-02 Hardaway Street

The repairs necessary to bring the above property above public nuisance standards must be completed within 70 days from the date of this Order.

c. Case No. 80-841 1406-08 Hardaway Street

The repairs necessary to bring the above property above public nuisance standards must be completed within 85 days from the date of this Order.

d. Case No. 80-842 1412-14 Hardaway Street
Case No. 80-844 1418-20 Hardaway Street

The repairs necessary to bring the above properties above public nuisance standards must be completed within 90 days from the date of this Order.

e. Case No. 80-845 1430-32 Hardaway Street
Case No. 80-846 1436-38 Hardaway Street

The repairs necessary to bring the above properties above public nuisance standards must be completed within 115 days from the date of this Order.

f. Case No. 80-847 1442-44 Hardaway Street
Case No. 80-848 1500-02 Hardaway Street
Case No. 80-751 1424-26 Hardaway Street

The repairs necessary to bring the above properties above public nuisance standards must be completed within 130 days from the date of this Order.

g. Case No. 80-752 1506-08 Hardaway Street
Case No. 80-849 1518-20 Hardaway Street

The repairs necessary to bring the above properties above public nuisance standards must be completed within 145 days from the date of this Order.

h. Case No. 80-753 1512-14 Hardaway Street
Case No. 80-850 1524-26 Hardaway Street

The repairs necessary to bring the above properties above public nuisance standards must be completed within 160 days from the date of this Order.

i. Case No. 80-851 1530-32 Hardaway Street
Case No. 80-853 1536-38 Hardaway Street
Case No. 80-854 1542-44 Hardaway Street

The repairs necessary to bring the above properties above public nuisance standards must be completed within 175 days from the date of this Order.

4. That the Guardian Ad Litems in the above actions are entitled to a reasonable fee for their services rendered herein, however, the Court retains jurisdiction and reserves the setting of said fee for a later date.

5. That the Plaintiff is entitled to recover of the Defendants all costs incurred herein, including but not limited to abstract fees, attorneys' fees, Court costs, and the cost of removing said nuisance if said nuisance is removed by the Plaintiff.

6. The Court retains jurisdiction for the enforcement of this Order and for the adjudication of all issues involved in

these actions which have not been determined by this Decree.

DONE this 2nd day of April, 1981.

/s/ Sam W. Taylor
CIRCUIT JUDGE

Filed April 2, 1981
Pauline C. Eubanks
Circuit Clerk

APPENDIX B

October 27, 1981

THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1981-82

80-575
CHARLES S. CONLEY
V.
CITY OF MONTGOMERY, ALABAMA,
A Municipal Corporation

MONTGOMERY CIRCUIT COURT

ORDER

This Court on October 19, 1981, ordered the City of Montgomery to show cause in writing to be filed in the Office of the Clerk of this Court, within seven (7) days of that date, why the final judgments in *City of Montgomery v. Charles S. Conley and Certain Lands,* in cases CV 80-751 to 754 and CV 840 to 856, inclusive, in the Circuit Court of Montgomery County, Alabama, should not be stayed pending the appeal in this case. The City of Montgomery, on October 23, 1981, filed a response to the motion for the stay of execution. On examination thereof, this Court has concluded that the City of Montgomery has not satisfactorily shown to this Court why there should be a supersedeas bond in the amount of $125,000, and, further, the City of Montgomery has not shown to this Court why the judgments appealed from should not be stayed pending an

appeal in this case.

IT IS, THEREFORE, ORDERED that the judgments entered on April 2, 1981, in CV 80-751 to 754 and CV840 to 856 be, and they are hereby, stayed, without bond, pending the appeal and pending further orders of this Court.

IT IS FURTHER ORDERED that the Clerk of this Court shall serve a copy of this order, by sending a copy of same, by United States mail postage prepaid, to the Clerk of the City of Montgomery, to the Clerk of the Circuit Court of Montgomery County, and to Mr. Richard C. Belser, Attorney for the City of Montgomery, at their respective addresses.

Torbert, C. J., and Faulkner, Almon, Embry, and Adams, JJ., concur.

I J. O. Sentell, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court. Witness my hand this 28th day of Oct. 1981.

/s/ J. O. Sentell

THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT
THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1981-82

80-575

Charles S. Conley

V.

City of Montgomery, Alabama,
a Municipal Corporation

Appeal from Montgomery Circuit Court

BEATTY, JUSTICE.

The City of Montgomery, a municipal corporation, filed numerous actions against Charles S. Conley, owner of nineteen duplex housing units, seeking to enforce its uniform minimum housing code and to have each of the duplex units enjoined as a public nuisance. The actions, originally filed separately but consolidated for trial, were brought pursuant to Code of 1975, §§6-5-122, 11-47-117, -118, which provide that any municipality of this state may commence an action seeking to abate or enjoin any public nuisance injurious to the health, morals, comfort or welfare of the community or any portion thereof. After receiving evidence *ore tenus*, the trial court found that each of the units is a public nuisance and ordered defendant Conley to remove the nuisances by bringing the properties into compliance with the minimum housing code requirements within a reasonable timetable established by the court or suffer the removal or razing of the structures by plaintiff. All

costs, including but not limited to abstract fees, attorneys' fees, court costs and the cost of removing the nuisances if they are removed by plaintiff, were charged against defendant. Defendant appeals. We affirm.

Defendant contends that the order of the trial court was contrary to the great weight of the evidence. The order was based upon the following findings made by the trial court:

> "The Court finds that each of the subject properties remain, in varying degrees, public nuisances and further finds that the City of Montgomery, Alabama, a Municipal Corporation, has legal authority to enjoin and abate such public nuisances.
>
> "The Court finds from the evidence that the Plaintiff has pursued the abatement of the public nuisance condition of the subject properties for several years and more specifically has attempted to require the present property owner, Defendant Charles S. Conley, to remove or correct the public nuisance condition existing on each of the subject properties since 1978.
>
> "The Court finds from the evidence that the Plaintiff has made reasonable requests of the property owner, Conley, to remove the public nuisance conditions existing on the subject properties and has established reasonable timetables for the removal or correction of the public nuisance conditions existing thereon. The Court further finds, however, that the Defendant Property owner, Conley,

has failed, after notice, to comply with these timetables to bring the subject properties above public nuisance standards.

"The Court finds from the evidence that the Plaintiff has not discriminated against either the subject properties or the owner of the subject properties in its application and enforcement of Sections 6-5-122 and 11-47-117 thru -118, Code of Alabama, 1975. While the evidence in these subject cases clearly demonstrates lack of discrimination by the Plaintiff, the Court, being familiar with numerous other proceedings, brought by the Plaintiff to abate public nuisances, takes judicial knowledge of the standard procedures employed by the Plaintiff and finds that these procedures were employed by the Plaintiff with regard to the subject properties and as concerns the subject property owner."

When, as here, the trial court has heard testimony *ore tenus*, a presumption exists as to the correctness of its findings of fact. *Rush v. Atomic Electric Co.*, Ala., 384 So.2d 1067 (1980). We find that the trial court's judgment was amply supported by the evidence. The Director of the Housing Code Enforcement Division of the City of Montgomery, who conducted frequent inspections of the subject properties, testified that, in his opinion, the duplexes were "almost unfit for human habitation." The record also reveals that complaints were received by the city from tenants and neighbors, as well as from a member of the city council, about the condition of the duplexes.

Defendant claims that the order of the trial court reveals bias and prejudice against him by imposing an unreasonable timetable for the making of repairs as a condition to avoiding the destruction of his property. We respectfully disagree. The record discloses that defendant was aware, at the time he purchased the duplex units, that many of them did not comply with the minimum housing code requirements. Furthermore, defendant did not offer alternative time schedules for making the repairs. We held in *National Southern Products Corp. v. City of Tuscaloosa*, 246 Ala. 316, 20 So.2d 329 (1944), that the burden rests upon the property owner to bring forward matters showing that abatement of the public nuisance could be accomplished by less drastic means than requested by the municipality. Defendant here did not meet that burden.

Defendant raises other issues which he claims present constitutional questions. The record fails to disclose that such questions were presented to the court below; therefore, we cannot address them. *Cooper v. Green*, Ala., 359 So.2d 377 (1978). The judgment must be, and is, affirmed.

AFFIRMED.

Torbert, C. J., Maddox, Jones and Shores, JJ., concur.

I J. O. Sentell, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court.

Witness my hand this 23 day of April, 1982.

/s/ J. O. Sentell
Clerk, Supreme Court of Alabama

APPENDIX C

UNIFORM MINIMUM HOUSING CODE

OF THE

CITY OF MONTGOMERY, ALABAMA

ADOPTED December 6, 1963,
ORDINANCE NO. 49-63

Section 16: ENFORCEMENT

Section 16.1:

The standards heretofore set in this code shall be enforced by the Housing Code Director who is hereby authorized and directed to cause the Housing Code Inspector, the Health Officer, and the Building Inspector, the Gas, Fire, Plumbing, Electrical and the Sanitary Inspectors to assist, when necessary, in determining the conditions of dwellings, dwelling units, rooming units and premises located in the city of Montgomery, Alabama. For the purpose of making such inspections, the Housing Code Director or his representative is hereby authorized to enter, examine and survey at a reasonable time of day all dwellings, dwelling units, rooming units and premises.

The owner or occupant of every dwelling, dwelling unit, and rooming unit, or the person in charge thereof, shall give the Housing Director free access to such dwellings, dwelling unit or rooming unit and its premises, at all reasonable times for the purpose of such inspection, examination and survey. Every occupant of a dwelling or dwelling unit shall give the owner thereof, or his agent, or employee,

access to any part of such dwelling or dwelling unit or its premises at all reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this code or with any lawful order issued pursuant to the provisions of this Code.